
Appeal Decision

Site visit made on 27 February 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 17th APRIL 2023

Appeal Ref: APP/F3545/C/21/3283069

**Land North East of North End Road, North End Road, Exning, Suffolk
CB8 7PD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Lea-Anne Simmons against an enforcement notice issued by West Suffolk Council.
- The enforcement notice was issued on 19 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of a cart lodge and kennels. For identification purposes, the building that this notice relates to, is that which was subject to the planning application DC/18/0404/FUL.
- The requirements of the notice are: 1. Demolish the cart lodge and kennel, including all foundations and footings; 2. Remove all resultant materials and debris occurring from step 5.1 above from the site; 3. Leave the land in a level and tidy condition.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld a correction and a variation in the terms set out below in the Formal Decision.

The Notice

1. It is a requirement of the notice that the land is left in a 'level and tidy condition'. However, since this entails subjective assessment, I shall amend this simply to require restoration of the land to its previous condition. This would not result in injustice to either party since it does not expand/reduce the requirement and achieves what the notice is properly permitted to require.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

2. The main issue is the effect on the character and appearance of the area.

Reasons

3. The appeal site lies outside the settlement boundary of Exning and in the open countryside. The appeal building is apparently currently in use for the appellant's dog breeding business, though the Council emphasises that this potentially represents a material change of use which does not have planning permission.

4. Policy DM5 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (2015) ('JDMPD') deals with development in the countryside. This indicates that proposals for economic growth will be permitted where there is: (a) no irreversible loss of best and most versatile agricultural land; (b) no significant detrimental impact on the historic environment, character and visual amenity of the landscape and biodiversity interests; and (c) no significant adverse impact on the local highway network. Policy DM2 of the JDMPD stipulates that proposals for all new development should, amongst other things, recognise and address the key characteristics, landscape character and local distinctiveness, and maintain a sense of place and/or local character.
5. The appeal site sits close to the end of a rural lane which gives access to fields and to a small number of residential properties. Whilst there is a scattering of built development along the road, the fields and greenery-lined route create an obviously open and rural character. The site was granted planning permission on appeal¹ for a residential caravan site for two gypsy families and the appeal building is seen in the context of this site as well as the wider rural surroundings.
6. Whilst the appeal building is designed as a local vernacular building, its significant scale and massing urbanises the open countryside character of the surrounding area. Although obscuring to some extent the residential caravan site, it is an incongruous addition in the context of the caravan development as it reads as a dominant addition, rather than a low-key incidental outbuilding. The appeal building sits adjacent to the roadside boundary and, although only visible in localised views, it is a visually discordant presence by reason of its size and context, drawing the eye in the rural setting.
7. I find then on the main issue that the appeal building has a significantly harmful effect on the character and appearance of the area. It conflicts in this way with Policies DM2 and DM5 as outlined above, which seek to preserve local distinctiveness and the character and appearance of the countryside.

Other matters

8. The appellant makes reference to the dog breeding business currently operating from the building and draws my attention to local and national policy in support of economic development in rural areas. As outlined above though, development plan policy in Policy DM5 only encourages this where, amongst other things, there is no significant detrimental impact on the character and visual amenity of the landscape. Similarly, whilst national policy encourages use of previously developed land and recognises economic development in rural areas may have to be located outside settlements, it also recognises the intrinsic character and beauty of the countryside and seeks to protect local character and distinctiveness.
9. The appellant's evidence is also that the attic of the appeal building provides domestic storage space. However, it seems likely that appropriate domestic storage space could be achieved in a less visually harmful way. Additional privacy afforded to the appellant's caravan pitch by the appeal building does not justify the visual harm since this could be provided by greenery which would preserve rural character.

¹ APP/H3510/W/16/3146430

Conclusion on ground (a) and the DPA

10. Drawing these matters together, I find that the appeal development results in material harm to the character and appearance of the area and in view of this fundamental issue, conflicts with the development plan, read as a whole. There are no material considerations which indicate a decision other than in accordance with the development plan and accordingly, the appeal on ground (a) fails and planning permission should be refused as regards the DPA.

The appeal on ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
12. The notice stipulates a 6 month compliance period. The appellant requests a 12 month period on the basis that re-siting the dog breeding business and retaining existing employees is likely to take more than six months.
13. Whether or not the existing dog breeding business would require planning permission as a material change of use, the reality of the situation appears to be that compliance with the notice is very likely to require relocating the dog breeding business. Bearing in mind the particular requirements and welfare considerations related to relocating this type of business and taking into account ongoing visual harm, a nine month compliance period would strike the right balance as between these factors.
14. The appeal on ground (g) succeeds to this extent.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

16. It is directed that the enforcement notice is corrected and varied by:
- In paragraph 5 of the notice deletion of the wording 'Leave the land in a level and tidy condition' and substitution of 'Restore the land to its former condition prior to the breach'; and
 - In paragraph 6 of the notice deletion of the wording '6 months' and substitution of '9 months'.
17. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond
INSPECTOR